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No. 432

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

DAN E. MAHER, Doing Business As INTERSTATE BUSSES,
Appellee.

PETITION FOR LIMITED REHEARING

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

DAN E. MAHER, Doing Business As
INTERSTATE BUSSES,
Appellee.

To the Honorable Justice Felix Frankfurter:

Comes now Dan E. Maher, appellee, in the above entitled cause, and presents this, his petition, for a limited rehearing of the above entitled cause, and in support thereof respectfully shows:

I

The proviso of Section 206 of the Motor Carrier Act of 1935, creates an exemption as a matter of right in favor of an operator, which requires mandatory action by the Interstate Commerce Commission rather than an assumption of discretion when once the facts are proved, placing the operator within the exemption.

II

The Commission found that the appellee was engaged in an irregular passenger carrier operation be-

tween the States of Oregon and Washington, on June 1, 1935. This fact establishes, in the beginning, the appellee's exemption rights.

III

The words of the "Grandfather" clause, "has so operated since that time," can only refer to the period from June 1, 1935, until the effective date of the Act, namely, October 15, 1935. The findings of the Commission confirm the fact that appellee was operating an irregular operation between the States of Oregon and Washington between these dates, and on October 15, 1935.

IV

Appellee's rights, then, are determinative upon the character of his actual operation on June 1, 1935, and the continuance thereof until and on October 15, 1935.

V

The appellee filed a "Grandfather" clause application within the time limited by the Act, and performed every function necessary to entitle him to exemption under said proviso, and should be entitled to the continuation of such operation. *1

*1 Commissioner Lee, concurring in part with the Commission's findings and Order, said: "This applicant has been engaged in the Interstate transportation of passengers, as a carrier by motor vehicle since 1931. Under the "Grandfather" clause of the Motor Carrier Act of 1935, he is entitled to continue to operate. I agree with the majority that his regular route operation between Portland and Seattle does not come within the purview of the "Grandfather" clause. However, he did continue motor carrier operations begun long before the passage of the Act, and it is not right that he should be deprived of his right to operate in interstate commerce as he was doing when the Act was passed. By the "Grandfather" clause, it was sought to protect carriers in their existing operations. I would issue to him a certificate of convenience and necessity authorizing the continuance of the operation he was conducting when the Act was passed."

VI

Error in the form of application should not preclude the appellee when once the factual situation is proved, entitling him to exemption. *2

VII

The type of operation performed by the appellee after October 15, 1935, is not determinative of his exemption rights which were established prior to that date, because the Act gives the Commission authority to regulate, or penalize operators who do not conform to their certificate requirements and regulation.

VIII

The Commission has the power and authority to subject the appellee to penalties under the Act, when once it is determined that he is operating in contravention thereof.

IX

The effect of the judgment and decree of this court is to penalize and deprive the appellee, and cause a forfeiture of his established rights because of a mistaken concept of the law.

X

The appellee should be subject to penalty under

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*2 See Butcher Motor Carrier Application 1MCC485.
Bowles Common Carrier Application 1MCC589.
Jaax Common Carrier Application 1MCC597.
Michael Common Carrier Application 3MCC617.

the terms of the Act rather than to forfeiture of known rights, entitling him to exemption. The issuance of a certificate upon the facts is mandatory. The type of certificate issued is within the discretion of the Commission.

XI

The appellee should be entitled to the continuance of the irregular "anywhere-for-hire" operations conducted by him on June 1, 1935, to and including October 15, 1935, and the Commission authorized to determine the nature and extent of such operations. *3

Wherefore upon the foregoing grounds, it is respectfully urged that this petition for a limited rehearing be granted and that the judgment and decree of the District Court of the United States for the District of Oregon be upon further consideration affirmed as to the matters herein contained.

Respectfully submitted,
WILLIAM L. HARRISON,
Counsel for Dan E. Maher

CERTIFICATE OF COUNSEL

I, William L. Harrison, counsel for the above named appellee, petitioner herein, do certify that the foregoing petition for limited rehearing of this cause is presented in good faith and not for delay.

WILLIAM L. HARRISON

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*3 See Section 208 Motor Carrier Act of 1935.

PROOF OF SERVICE

County of Multnomah } ss
State of Oregon }

Service of the within petition for limited rehearing is hereby accepted in Portland, Multnomah County, Oregon this _____ day of May, 1939, by receiving a copy thereof duly certified to as such by William L. Harrison, counsel for Dan E. Maher.

_____
United States District Attorney for Oregon.

CERTIFICATION OF COPY

State of Oregon } ss
County of Multnomah }

I, William L. Harrison, Counsel for Dan E. Maher, appellee, hereby certify that the within petition for rehearing is a true and correct copy of the original and the whole thereof.

WILLIAM L. HARRISON,
Counsel for Dan E. Maher